IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 497 of 2003

Date of decision 11.9.2006

Milap Chand **…Appellant.**

Versus

Ramesh Chaudhary and others **…Respondents.**

Coram

The Hon'ble Mr. Justice : **Surjit Singh, Judge.**

Whether approved for reporting?

For the appellant : **Mr. K.D. Sood, Advocate.**

For respondents : **Mr. Ramakant Sharma, Advocate.**

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Predecessor of the respondents, named Daroga, hereinafter called plaintiff, filed a suit for issuance of permanent prohibitory injunction restraining the appellant / defendant from causing any interference in his possession over land measuring 0-03-16 Hectares, bearing Khasra No. 419 and also for mandatory injunction directing the appellant to remove

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Whether reporters of Local Papers may be allowed to see the Judgment?

encroachment upon a portion of Khasra No. 419 made by constructing stair case, bath room and 'Verandah' and developing a portion as court yard / kitchen garden.

3. The suit was contested by the appellant / defendant. He claimed that he was owner of Khasra No. 420 adjoining Khasra No. 419, with respect to which the plaintiff had claimed the aforesaid reliefs, and that in the year 1977 while constructing a house on his own adjoining Khasra No. 420, he had made encroachment on a portion of Khasra No. 419 belonging to the plaintiff to the extent of 19 square meters and that in lieu of that encroachment he (appellant) had parted with possession of Khasra No. 421 and 420/1 in favour of the plaintiff. Plea of adverse possession was also raised, in the alternative.

4. Trial Court rejected the plea of the appellant / defendant and decreed the suit of the plaintiff. Appeal was filed by the appellant / defendant in the Court of learned District Judge, which stands dismissed.

5. According to to the learned counsel for the appellant, the trial Court has passed the decree in respect of even that portion of the house of the appellant / defendant, which was constructed in the year 1977 in spite of the fact that the suit was filed in the year 1994 and was thus barred by time on the face of it at least with respect to that part of suit land on which a part of house was constructed in 1977. Another submission made by the learned counsel is that the appellant / defendant is a co-sharer in the suit land with the plaintiff and as such there could not have been a decree for permanent prohibitory injunction and mandatory injunction against him and that the only remedy available to the plaintiff was to seek partition of the property.

6. Neither of the two points has any merit. There is an entry in the Jamabandi for the year 1992-93 copy of which is Ext. P-9. According to this entry, the appellant has constructed his house on 100 square meter area out of Khasra No. 420. No portion of the house is shown to exist on Khasra No. 419, the whole of which is recorded as 'Kuhal Abal' in the said Jamabandi. The entry in this Jamabandi, coupled with the oral evidence adduced by the plaintiff shows that encroachment by way of extension of construction on a portion of Khasra No. 419 was made after preparation of Jamabandi for the year 1992-93, copy Ext. P-9.

7. The defendant while in the witness box as DW-1 has admitted that when the plaintiff objected to the construction, he hurled abuses at him and continued with the construction and the plaintiff then made a complaint to the Panchayat. Some documents have been placed on record pertaining to the complaint that was lodged with the Panchayat and these documents show that the incident had taken place in 1994. This fact corroborates the plea of the plaintiff that the construction on a portion of Khasra No. 419 was made in the year 1991-92 and falsifies the plea of the appellant / defendant that the construction on a portion of Khasra No. 419 was made in the year 1977, when the house was constructed on the adjoining Khasra No. 420.

8. For the foregoing reasons the plea that the suit was barred by limitation, is held to be devoid of merit.

9. Contention that the appellant / defendant is a co-sharer with the respondents also does not have any merit. Jamabandi for the year 1992-93 shows that the appellant / defendant purchased a share in Khasra No. 418, 420 and 421 only. He did not purchase any share in Khasra No. 419, which is in exclusive possession of the respondents, per Jamabandi

for the year 1992-93, though he (the plaintiff) is shown to own it jointly with some persons other than the appellant.

10. For the foregoing reasons, I find no substance in the submissions made by the learned counsel for the appellant. In any case, no question of law, much less a substantial question of law, arises. Hence, the appeal is dismissed.

September 11, 2006 (BC) **(Surjit Singh)**
Judge